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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/728,222	11/27/2003	Khai Hee Kwan		7484

23336 7590 06/09/2008

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ART UNIT	PAPER NUMBER
3692	

MAIL DATE	DELIVERY MODE
06/09/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/728,222
Filing Date: November 27, 2003
Appellant(s): KWAN, KHAI HEE

Khai Hee Kwan
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed April 14, 2008 appealing from the Office action mailed November 9, 2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

Matthew Wall Buy car online to beat British prices :[1GP Edition]. Sunday Times [serial online]. February 25, 2001:6. Available from: ProQuest Information and Learning, Ann Arbor, Mi. Accessed November 6, 2007, Document ID: 69089378

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the Applicant regards as his invention.

2. Claim 1 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Appellant regards as the invention.

3. Regarding claim 1, Appellant recites in lines 5-8 receiving over said network at said central controller, vehicle pricing information comprising first data representative of time to delivery of said new vehicle, a second data representative of a delivery destination of said new vehicle and third data representative of a price said user is willing to pay for said new vehicle. It is ambiguous and confusing as to who or what is providing and receiving the various data. It is not clear who is sending the central controller vehicle pricing information comprising first data representative of time to delivery of said new vehicle, a second data representative of a delivery destination of said new vehicle and third data representative of a price said user is willing to pay for said new vehicle. A user could send the third data, however it would be unlikely the user sending the first and second data. On the other hand, the vehicle manufacture system could send the first and second data, however it would be unlikely the vehicle manufacture system sending the third data.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 5-8, 12-15, 19 and 20 rejected under 35 U.S.C. 102(b) as being anticipated by Buy car online to beat British prices by Matthew Wall (see PTO-892, Ref. V). Hereinafter Wall.

6. As per claim 1, Wall teaches a method for determining vehicle option premium to purchase or sale a new vehicle over a network connected to a central controller and a plurality of terminals, comprising the steps:

providing a vehicle manufacturer system linked to said network;

receiving over said network at said central controller, vehicle pricing information comprising first data representative of time to delivery of said new vehicle, a second data representative of a delivery destination of said new vehicle and third data representative of a price said user is willing to pay for said new vehicle;

calculating at said central controller the vehicle option premium based on said first data and said third data;

outputting the vehicle option premium to the user for decision over said network;

upon acceptance by said user of said vehicle option premium at said central controller, performing a payment transaction for said premium or a deposit over said network; and

creating a vehicle option contract to lock in said third data (see PTO-892, Ref. V).

7. As per claim 5, Wall teaches the method of claim 1 as described above. Wall further teaches receiving an indication that a user has purchased the vehicle option, updating a customer database to record purchase of the vehicle option; and posting transaction details accessible by all users (see PTO-892, Ref. V).

8. As per claim 6, Wall teaches the method of claim 1 as described above. Wall further teaches further comprising the steps of: receiving a user's request to purchase a vehicle utilising user's vehicle option; performing a payment transaction to pay the price; and updating a database to reflect the vehicle option is used (see PTO-892, Ref. V).

9. As per claim 7, Wall teaches the method of claim 1 as described above. Wall further teaches further comprising the steps of: receiving a user's request to sell vehicle using user's vehicle option; performing a payment transaction to pay the price; and updating a database to reflect the vehicle option is used (see PTO-892, Ref. V).

10. Claims 8 and 15 recite similar limitations to claim 1 and thus rejected using the same art and rationale in the rejection of claim 1 as set forth above.

11. Claim 12 recite similar limitations to claim 5 and thus rejected using the same art and rationale in the rejection of claim 5 as set forth above.

12. Claims 13 and 19 recite similar limitations to claim 6 and thus rejected using the same art and rationale in the rejection of claim 6 as set forth above.

13. Claims 14 and 20 recite similar limitations to claim 7 and thus rejected using the same art and rationale in the rejection of claim 7 as set forth above.

(10) Response to Argument

A. Rejection of Claim 1 under U.S.C. 112 2nd paragraph on pages 5-8.

Appellant argues that there is no requirement for identifying who is sending data as recited in claim 1. Examiner disagrees. 35 U.S.C. 112 2nd paragraph states The specification shall conclude with one or more claims ***particularly pointing out and distinctly claiming*** the subject matter which the applicant regards as his invention. To practice the Appellant's invention, one must know where the data is coming from and who is sending the data. Appellant's own admission on page 5, line 24 in the last paragraph states that the claim is ambiguous and confusion as to who/ what is sending. Appellant argues that if Examiner could identify who is sending the data then one skilled in the art would be able to also. Examiner had to interpret the claims for examining purposes. Examiner emphasizes that the language is ambiguous and unclear to one skilled in the art. Examiner interpreted the claims, however it was not clear whether the interpretation was correct or not. A user could send the third data, however it would be unlikely the user sending the first and second data. On the other hand, the vehicle manufacture system could send the first and second data, however it would be unlikely the vehicle manufacture system sending the third data. Which scenario is correct or incorrect is still unclear since Appellant has not amended the claim to clarify who is sending the data.

B. Rejection of Claims 1, 5-8, 12-15, 19 and 20 under 35 U.S.C. 102(b) on pages 9-15.

Appellant argues that Wall does not teach the element of Calculating. Examiner disagrees. A "calculated" booking fee is implicit, because the fee has to be based on some form of calculation. One skilled in the art would know that a booking fee must be calculated such that an entity charging a booking fee gains something from it like a profit. Otherwise, there would be no reason to charge a booking fee if a business would not profit from it. For example, Wall teaches that Broadspeed charges its customers booking fee of Pounds 150. It is inherent that there is a profit margin of some kind built into the booking fee charged otherwise Broadspeed would go out of business if it was not making a profit. Broadspeed could also lose money on the booking fee, and profit elsewhere in the business, however even in this scenario, the booking fee would have to be set at some minimum amount. To reiterate, a booking fee is inherently calculated based on a profit or loss margin, otherwise Broadspeed would not make any money and would go out of business.

Next, Appellant argues that Wall fails to teach providing a linked network to vehicle manufacturer system. A link to a vehicle manufacturer system is implicit, because Broadspeed has to get pricing information and guidance from the vehicle manufacturer so they can set their pricing as it would relate to the pricing that is available through suggested retail pricing that is provided by the manufacturer. In response to Appellant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of

ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Next, Appellant argues that Wall fails to teach first data representative of time to delivery, a second data representative of a delivery destination and a third data representative of a price a user is willing to pay. Examiner disagrees. Wall teaches the first data in paragraph 5. Wall teaches that Delivery typically takes 12 to 16 weeks…expensive cars. Next, Wall teaches the second data in paragraph 6. Wall teaches You can either pick up the car yourself, or…extra Pounds 799 (including Vat). Lastly, Wall teaches the third data in paragraph 7. Wall teaches For example, a BMW Z8 would cost about Pounds 80,0000 in Britain, but Pounds 9,000 less through Broadspeed. If a user books a BMW Z8 through Broadspeed, the price would be Pounds 71,000 and this would be the price a user is willing to pay. Once the user locks in a price with Broadspeed as in the example mentioned above, one of ordinary skill in the art would know that this **the price the user is willing to pay** otherwise the user would have no reason to lock in the price. Broadspeed sends or displays a price to a user over the Internet or network. This reads on Appellants limitation receiving over said network...third data representative of a price said user is willing to pay for said new vehicle.

Re: claim 5, 12, Appellant claims Wall does not teach posting transaction details accessible by all users. Examiner notes that the applied reference has been interpreted and applied assuming basic knowledge of one of ordinary skill in the art.

According to *in re Jacoby,* 135 USPQ 317 (CCPA 1962), the skilled artisan is presumed to know something more about the art than only what is disclosed in the applied references. Also, in *In re Bode,* 193 USPQ 12 (CCPA 1977), the court found that every reference relies to some extent on knowledge of persons skilled in the art to complement that, which is disclosed therein. As applied to Wall, it is within the basic knowledge of a skilled artisan that transaction details regarding a purchase of a vehicle option (booking fee) would be available to the consumer involved in the transaction. Posting transaction details to all users (or customers) is old and well known.

In response to Appellant's argument that the references fail to show certain features of Appellant's invention, it is noted that the features upon which Appellant relies (i.e., for all users to see ***another's transaction***) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Re: claim 6, 13, 19, Appellant claims Wall does not teach vehicle options. Examiner disagrees. Wall discusses a booking fee involved in the sale of vehicles. The booking fee locks in the price of the vehicle as taught by Wall. The price that Broadspeed quotes includes Vat, 12-months' tax and a Pounds 150 booking fee. If a customer accepts this price, the customer has inherently accepted the Vat, 12-months' tax and a Pounds 150 booking fee also. Therefore, the booking fee or vehicle option as Appellant refers to has been used.

Re: claim 7, 14, 20, Wall teaches the selling of vehicles by Broadspeed on the Internet using booking fees. It is unclear what Appellant means by These claims relate to using vehicle option to ***SALE*** a vehicle by user. Broadspeed receives requests from users or customer to sell vehicles using vehicle options (booking fees). When a user or customer purchases a vehicle from Broadspeed, one of ordinary skill in the art would know that this would be an implicit request from the user to Broadspeed to sell a vehicle.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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